

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) GN Docket No. 13-86
FCC Reduces Backlog of Broadcast)
Indecency Complaints; Seeks Comment on)
Egregious Cases Policy)

**SUPPLEMENTAL COMMENTS OF
FOX ENTERTAINMENT GROUP, INC., FOX TELEVISION HOLDINGS, INC.,
AND
FBC TELEVISION AFFILIATES ASSOCIATION**

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY2

II. THE CONSTITUTION REQUIRES THAT THE COMMISSION MAINTAIN A RESTRAINED INDECENCY ENFORCEMENT REGIME WITH STRIDENT PROCEDURAL SAFEGUARDS, INCLUDING RESPONDING ONLY TO *BONA FIDE* VIEWER COMPLAINTS.....5

 A. OVERZEALOUS ADVOCACY GROUPS AND MODERN TECHNOLOGY HAVE COMBINED TO UNDERMINE THE RELIABILITY OF THE VIEWER COMPLAINT PROCESS.....5

 B. IF THE COMMISSION CONTINUES TO PURSUE INDECENCY ENFORCEMENT, IT SHOULD REMEDY THE FLAWS IN ITS PROCESSES THAT HAVE BEEN REVEALED BY FORM COMPLAINTS9

III. THE FCC’S FAILURE TO MAINTAIN ENFORCEMENT RESTRAINT LEADS INEXORABLY TO UNCONSTITUTIONAL CENSORSHIP THAT SEVERELY CHILLS BROADCAST SPEECH.....12

 A. THE D.C. CIRCUIT HAS MADE CLEAR THAT THE FIRST AMENDMENT REQUIRES RIGOROUS PROCEDURAL PROTECTIONS, BECAUSE OTHERWISE INDECENCY ENFORCEMENT CAN BECOME A ‘SCHEME OF INFORMAL CENSORSHIP’ AND A *DE FACTO* SYSTEM OF PRIOR RESTRAINT.....12

 B. THE *IN TERROREM* EFFECT OF THIS INFORMAL SCHEME OF CENSORSHIP HAS CAUSED FOX AND OTHER BROADCASTERS TO CENSOR THEMSELVES, CHILLING SPEECH PROTECTED BY THE FIRST AMENDMENT.....14

IV. CONCLUSION.....16

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Fox Entertainment Group, Inc. and Fox Television Holdings, Inc. (together, “Fox”) and FBC Television Affiliates Association (“Fox Affiliates”) respectfully submit these comments to supplement the record following the initial submission of comments on June 19, 2013 in response to the above-captioned Public Notice.¹ Fox and the Fox Affiliates² submit this supplement specifically to ensure that the FCC is made aware of troubling new evidence that calls into question the reliability of the Commission’s complaint-driven enforcement procedures – procedures that are critical to the courts’ narrow endorsement of the constitutionality of indecency regulation for nearly 35 years. As detailed herein, a disturbing new tactic has emerged in which apparent complaint mills grind out fraudulent form complaints from apparently fake “viewers” using bogus addresses. These tactics undermine the reliability of the viewer complaint process and reflect disdain for the difficult balancing act the Commission must try to maintain in exercising its constitutionally-limited indecency power. We urge the

¹ *FCC Reduces Backlog of Broadcast Indecency Complaints by 70% (More Than One Million Complaints); Seeks Comment on Adopting Egregious Cases Policy*, Public Notice, 28 FCC Rcd. 4082 (2013) (“*Public Notice*”).

² The FBC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are affiliated with the FOX television network.

Commission to tighten its complaint procedures to put a stop to these schemes. But more importantly, we urge the FCC to recognize the degree to which these deceptions undermine whatever residue of constitutional authority may remain in the FCC's indecency enforcement toolkit.

I. INTRODUCTION AND SUMMARY

As Fox's initial comments explained, content-based restrictions on speech are presumptively unconstitutional, and the time has come for the FCC to cease treating broadcast media as second-class citizens under the First Amendment. Particularly in light of technological advances, and the erosion of the foundations for the agency's authority since the narrowly-decided *Pacifica* decision,³ Fox urged the Commission to conclude that it no longer has any lawful grounds to "police" broadcast speech on the basis that it is indecent.⁴ Instead, Fox asked the FCC to affirm that it has no right to deny broadcasters the same First Amendment protections enjoyed by every other medium of communication.

The only rational approach for the Commission to take going forward would be to cease altogether its indefensible efforts to enforce broadcast indecency rules. Short of that, however, the FCC should acknowledge that its authority to regulate indecency has been endorsed by Federal courts only to the extent that the Commission adheres to stringent procedural safeguards that protect broadcasters' First Amendment rights.⁵ Otherwise, as the courts have made clear,

³ *FCC v. Pacifica Found.*, 438 U.S. 726 (1978) ("*Pacifica*").

⁴ *See* Comments of Fox, GN Docket No. 13-86 (submitted June 19, 2013), at 3-8 ("Fox Comments").

⁵ *See id.* at 26-28.

the FCC’s indecency enforcement activities can become an unconstitutional “scheme of informal censorship” and a *de facto* system of prior restraint.⁶

Fox’s initial comments detailed the manner in which previous Commissions, under prior Chairmen, permitted a creeping transformation of indecency enforcement practices to the point where the current regime effectively has become a system of prior administrative restraint.⁷ The *in terrorem* effect of this informal scheme of censorship has caused Fox and other broadcasters to censor themselves, chilling speech that is protected by the First Amendment. Long forgotten has been the FCC’s pledge – once integral to the courts’ willingness to uphold the indecency regime – to maintain a *restrained* indecency enforcement approach and to act *only* in response to *bona fide* viewer complaints.⁸

Nowhere is this more evident than in the plainly defective viewer-complaint process that the Commission has relied upon to trigger investigations of broadcast programming. The advance of technology and the growth of zealous advocacy groups have conspired to allow and even encourage a vocal minority to hijack the FCC’s processes.⁹ Today, these faceless Internet denizens use technology to fire off complaints behind a cloak of virtual anonymity, leveraging the complaint process as their primary tool to wage a culture war against content that they happen to dislike. Instead of simply changing the channel on their televisions, they engage in self-described “campaigns” designed to crush broadcasters’ constitutional right to free speech. And most recently, it has come to our attention, advocates have begun to undertake elaborate

⁶ *Action for Children’s Television v. FCC*, 59 F.3d 1249, 1259, 1262 (D.C. Cir. 1995) (“ACT IV”).

⁷ See Fox Comments at 29.

⁸ See *Indus. Guidance on the Comm’n’s Case Law Interpreting 18 U.S.C. § 1464 & Enforcement Policies Regarding Broad. Indecency*, 16 FCC Rcd. 7999, 8015 (2001) (“*Indecency Policy Statement*”).

⁹ See Fox Comments at 39-40.

ruses that manipulate the FCC's processes and deceive the Commission into believing that numerous complaints have been filed from numerous communities even if in reality they originate from a single source at a single location.

Specifically, Fox-owned stations recently received a series of substantively identical indecency complaints, which also were submitted to the Commission, from "viewers" purporting to reside in markets across the country. The form letters all contained a "name" and "address" of someone who supposedly watched an episode of *Family Guy* in the market that allegedly was the home of the complainant. Each of these letters, however, was postmarked from a Miami, Florida post office notwithstanding that the "viewers" claimed to be from 16 different communities. Worse still, Fox's subsequent investigation revealed that *every single "address"* in the complaints was fraudulent. Rather than consumer homes, the addresses appearing on the complaints corresponded to empty fields, vacant lots, parking areas, retail establishments, or industrial facilities. A substantial number of independently-owned television stations affiliated with the FOX Network received similar complaints, with the same flaws and also all postmarked from a Miami, Florida post office.

Quite obviously, these complaints all originated from a single source even as they were meant to convey some sort of wide-ranging manifestation of viewer attitudes in markets across the country. That these letters are unreliable indicia of broad viewer sentiment should be self-evident. More importantly for the Commission's enforcement regime, the existence of this scheme reflects a fundamental breakdown in the complaint-driven enforcement compact. The Commission cannot responsibly administer a narrow indecency enforcement policy, basing investigations on *bona fide* complaints, if it allows itself to be duped by sham filings. And the scheme described herein may not be an isolated occurrence. Fox and the Fox Affiliates

discovered it because the responsible party chose to send copies of the documents to Fox and its affiliates. More typically, however, complaints are submitted only to the FCC. Broadcasters are rarely permitted to see these complaints. If a broadcaster is able to obtain copies, the Commission redacts the complainants' names and addresses – making it impossible for Fox or other broadcasters to determine how frequently these types of deceptions occur.

Regardless, whether it has happened once or hundreds of times, the existence of this type of scheme seriously undermines the credibility of the complaint process and leaves the Commission constitutionally unable to fulfill its promise to maintain a restrained enforcement policy. Fox previously emphasized the need for complete transparency in the complaint process.¹⁰ That transparency is even more essential in light of the fraudulent complaints that have recently come to light. If the FCC does not abandon the indecency business once and for all, the Commission should at least undertake a concerted effort to tighten its complaint process, provide greater transparency to broadcasters, and ensure that it investigates and pursues indecency allegations only after determining that complaints originate with *bona fide* viewers.

II. THE CONSTITUTION REQUIRES THAT THE COMMISSION MAINTAIN A RESTRAINED INDECENCY ENFORCEMENT REGIME WITH STRINGENT PROCEDURAL SAFEGUARDS, INCLUDING RESPONDING ONLY TO *BONA FIDE* VIEWER COMPLAINTS

A. Overzealous Advocacy Groups and Modern Technology Have Combined to Undermine the Reliability of the Viewer Complaint Process

The FCC has long promised broadcasters and the courts that it would consider indecency enforcement only in response to *bona fide* viewer complaints. In its *Indecency Policy Statement*, the Commission attempted to provide guidance about its enforcement procedures, explaining that it does not independently monitor broadcasts for indecency but instead relies entirely on

¹⁰ Fox Comments at 38.

“documented complaints of indecent broadcasting received from the public.”¹¹ The FCC stated that it would usually dismiss complaints that are facially invalid without broadcasters ever learning about them.¹² Only once the Commission staff determined that a complaint was legitimate (and, of course, that it met the basic subject matter requirements for an indecency violation) would the content be evaluated under the indecency rules.¹³

Notably, under past Commissions, that guidance has been honored more in the breach than in actual cases. The FCC routinely has initiated indecency investigations without *bona fide* viewer complaints, relying for years on form complaints generated by online filing campaigns. These campaigns often have resulted in a flood of indecency complaints being filed at the FCC – many or all from individuals who did not even watch the program at issue – via automated, web-based forms.¹⁴ All of this has created a significant administrative asymmetry: it takes almost no time or cost for web-based campaigns to instigate numerous complaints about a vast array of broadcasts, but each individual complaint imposes significant burdens on the Commission’s limited enforcement resources to process, evaluate, and respond to every one of them. Worse, these complaints are regularly based on manifestly inaccurate descriptions of the content of programs (often written, and provided to complainants, by the advocacy organizations behind these campaigns).¹⁵ Rather than dismiss these facially deficient complaints before broadcasters

¹¹ *Indecency Policy Statement*, 16 FCC Rcd. at 8015.

¹² *Id.*

¹³ *Id.*

¹⁴ *See, e.g.*, Jonathan Make, *Backlogged Indecency Complaints Led Some to Expire*, *Commc’ns Daily*, June 18, 2010 (noting Parents Television Council “encourages members to file complaints on shows the group believes violated indecency rules” and acknowledging that a “complaint [is] filed by members at the group’s behest”).

¹⁵ *See, e.g.*, Fox Comments at 40.

ever learn of them, as required under the Commission's stated policies,¹⁶ the Bureau has instead used these complaints to issue letters of inquiry or to engage in other investigative steps regarding broadcast content.

As frustrating as this pattern has been for broadcasters, a new, even more disturbing trend has now come to light as well. Fox and the Fox Affiliates have become aware of a tactic in which an apparent complaint mill produces a series of substantively identical complaints against a network program. The complaints purport to be from different viewers in different markets across the country, but in reality all of the complaints originate from a single source. For example, Fox recently received complaints about an episode of the program *Family Guy* at nearly all of Fox's owned television stations. The complaint letters all contained the same verbiage printed using the same typeface, spacing and margins. Despite the fact that the names and addresses of the complainants appeared to identify unique individuals in 16 different markets in which the Fox-owned stations operate, all 16 letters were sent in envelopes postmarked from a Miami, Florida post office.

Even more troubling, each and every letter contained what appears to be a fraudulent address corresponding not to a residential home, but to vacant lots, empty fields, parking areas, retail establishments or industrial facilities. Many of the letters listed "addresses" that are not recognized by the U.S. Postal Service – in other words, *the proffered address does not correspond to any known place.*

For example, the complaint sent to KSAZ(TV), Fox's owned station in Phoenix, Ariz., purports to be from a viewer residing at 3821 E. Thomas Rd. in Phoenix. This address does not exist. The closest actual addresses are 3721 E. Thomas Rd., which is a Walmart, and 3833 E.

¹⁶ See *Indecency Policy Statement*, 16 FCC Rcd. at 8015.

Thomas Rd., which is a Radio Shack. Neither plausibly can be considered a viewer's residential address (and the complainant certainly did not claim to be an employee of either establishment). Similarly, the complaint sent to Fox's WTVT(TV) in Tampa, Fla., claims to be from a viewer living at 1401 W. Kennedy Blvd. in Tampa, but that address corresponds to an unimproved empty lot across the street from a strip mall and the offices of the Tampa Sheet Metal Company. The letter sent to KTTV(TV) in Los Angeles, Calif., has a return address of 4601 Crenshaw Blvd. in Los Angeles. That is the address for the Harrison-Ross Mortuary – a location unlikely to be the home of any *bona fide* viewer.

The version sent to WHBQ-TV in Memphis, Tenn., is allegedly from a viewer at 7255 Elvis Presley Blvd. in Memphis, but a Google map search reveals that address to be nonexistent. Its closest approximation is a vacant field along a highway at the Tennessee/Mississippi state line; the nearest structure to that fake address is a BP gas station. And the letter provided to WAGA(TV) in Atlanta, Ga., purports to be from a viewer with an address at 86 3rd Street in Atlanta. Once again, that address does not exist; in this instance the nearest actual location is an industrial office behind a chain link fence topped with razor wire.

To ease the Commission's understanding of how deceitful these complaints appear to be, Fox is enclosing herewith as Exhibit A copies of a representative sample of these letters, together with photographs that Fox personnel took of the "addresses" provided (or at least the address nearest to the fake locations listed). Moreover, Exhibit A contains the results of searches on the U.S. Postal Service's web site, which indicate that the "addresses" provided in the complaints are not recognized locations. A review of the images and information contained in Exhibit A can leave little doubt about the fraud this complaint mill has attempted to perpetrate on the Commission's processes.

A substantial number of the independently-owned stations affiliated with the FOX Network received identical complaints that also were sent from a Miami, Florida postmark, and which also contained names and “addresses” that can only be described as deceptive.

These sham filings confirm what broadcasters have long suspected: Many complaints originate from a single source and provide no demonstrable evidence of being submitted by a viewer of broadcast television. These filings, especially if they result in the FCC taking action on the basis of nothing more than a modern-day Potemkin village, threaten to trivialize the Commission’s work and bring ridicule on its processes. Moreover, these schemes compromise the FCC’s ability to live up to its promise to broadcasters and the courts that its restrained enforcement approach will be guided only by *legitimate* complaints.

Based on this information, the Commission quite clearly should dismiss any pending complaints against Fox and/or FOX Network-affiliated stations stemming from this episode of *Family Guy*. In light of the tactics identified herein, certainly any continued investigation or further enforcement activity with respect to this episode would be the antithesis of restrained and cautious enforcement.

B. If the Commission Continues to Pursue Indecency Enforcement, It Should Remedy the Flaws In Its Processes That Have Been Revealed By Form Complaints

Technology has greased the skids and enabled complaint mills like the one apparently at work in Miami to fire off multiple nearly identical letters with mail merged addresses pulled from thin air. These and other complaints likewise can be submitted to the FCC instantaneously via email with practically no effort. All of this enables a vocal minority to have a disproportionately loud “voice” in the indecency conversation. But when the intensity of that “voice” is really the product of an elaborate con, the FCC should take care not to be deceived. If

deceitful ploys and shady gambits are mistaken for genuine complaints, the viewer-oriented enforcement process will break down completely, and the FCC will be left in a constitutionally untenable position. Justice Powell provided the deciding vote to uphold the Commission's limited indecency authority in *Pacifica* precisely because he believed that "the Commission may be expected to proceed cautiously, as it has in the past."¹⁷

Accordingly, if the Commission continues to enforce indecency rules at all, it should significantly strengthen its processes to ensure that it only pursues *bona fide* complaints from actual viewers of the show that is the subject of the complaint. Complaint mills and campaigns against particular programs or broadcasters may generate headlines and even a sizeable raw number of documents that make their way to the FCC's servers. But the Commission cannot lawfully permit illegitimate manipulation of its processes to result in the trampling of broadcasters' constitutional protections. The FCC therefore should refuse to consider any indecency complaint unless the agency is reasonably able to determine that the submitter is a legitimate viewer of the complained-of content.

In addition, the FCC should cease its practice of redacting complainants' names and addresses from complaints, so that broadcast stations can assist the FCC in determining whether any particular complaint is *bona fide*. The legitimacy of a complaint-driven enforcement process depends upon a minimum degree of transparency.¹⁸ But all too often, broadcasters are unable to review full copies of indecency complaints that are filed with the Commission. The complaint

¹⁷ *Pacifica*, 438 U.S. at 756, 761–62, n.4 (Powell, J., concurring). The D.C. Circuit subsequently relied on Justice Powell's "expectation that [the] Commission will continue to proceed cautiously" in rejecting an overbreadth challenge to the agency's indecency regime, because "the potential chilling effect of the FCC's generic [indecency] definition . . . will be tempered by the Commission's restrained enforcement policy." *Action for Children's Television v. FCC*, 852 F.2d 1332, 1340, n.14 (D.C. Cir. 1988) ("ACT I") (Ginsburg, R.B., J.), *superseded in part*, 58 F.3d 654 (D.C. Cir. 1995) (en banc) ("ACT III").

¹⁸ See Fox Comments at 39.

mill described above happened to send copies of all of its letters to the Fox stations about which it complained. Absent this choice, over which Fox obviously had no control, Fox may never have learned of this elaborate ruse. Even when the FCC does share copies of complaints with broadcast stations (most often when the Enforcement Bureau initiates an investigation), the Commission redacts the complainant's name and address – or at least the name and address provided, which may or may not correspond to a real person or a real location.

In light of the fraud described herein, the FCC going forward should analyze all indecency complaints to determine whether the submitting party is a *bona fide* viewer. In addition, the complaint should allege that the viewer *actually* watched the show at issue. If that proves too burdensome, the Commission at least should provide to broadcasters unredacted copies of any complaint once it determines that the complained-of content is within the subject matter scope of the indecency rules. This would enable broadcasters to assist the FCC in ascertaining whether complaints are on their face illegitimate and unworthy of further consideration. Fox and the Fox Affiliates do not believe that there is any public interest justification for withholding this information. After all, the complaints (assuming they are legitimate) are submitted to a Federal agency by individuals who hope and expect that their personal opinions will summon the power of the Federal government to investigate and punish broadcasters for the content of their speech. There is no reason to believe that a viewer embarking on this path expects total anonymity, and there is no legal or policy justification for cloaking the identity of complaining viewers.¹⁹ Because the Constitution requires that the

¹⁹ Neither Fox nor the Fox Affiliates is aware of any law or regulation that requires the Commission to withhold the identity of a person who has filed a complaint. When it wants to, Congress knows how to enact protections that allow for anonymous complaints. *See, e.g.*, 15 U.S.C. § 78u–6(d) (creating procedures for whistleblowers to remain anonymous). Unlike the case of a corporate whistleblower – whose employer conceivably could retaliate against an

Commission’s indecency enforcement program be complaint driven, it is imperative that the complaints that can initiate an investigation themselves be legitimate. Keeping the identity of complainants confidential precludes broadcasters from assisting the Commission by smoking out fraudulent or otherwise deficient complaints.²⁰

In short, if the FCC insists on maintaining indecency rules, it has no choice but to adhere to the promise to cabin its approach by maintaining a restrained enforcement policy. Only by reverting to restraint – which cannot possibly include consideration of fraudulent complaints – can the Commission eliminate the powerful incentive that compels broadcasters to censor themselves.

III. THE FCC’S FAILURE TO MAINTAIN ENFORCEMENT RESTRAINT LEADS INEXORABLY TO UNCONSTITUTIONAL CENSORSHIP THAT SEVERELY CHILLS BROADCAST SPEECH

A. The D.C. Circuit Has Made Clear That the First Amendment Requires Rigorous Procedural Protections, Because Otherwise Indecency Enforcement Can Become a ‘Scheme of Informal Censorship’ and a *De Facto* System of Prior Restraint

The D.C. Circuit has recognized that “the system of broadcast regulation by Congress and the FCC . . . provides ample opportunity for substantial chilling of First Amendment freedoms,” and enforcement mechanisms within that structure can serve “to facilitate those exercises of power and persuasion which create the chill.”²¹ Thus, the court has said that without

individual for filing a complaint – broadcasters have no means of retaliating against a member of the public who files a complaint. And if there were some rare exception when disclosure of a complainant’s identity might be a legitimate concern, that could always be dealt with on a case-by-case basis.

²⁰ *Cf. Doe v. Reed*, 561 U.S. 186 (2010) (holding that disclosure of signatures on referendum petitions is important to fostering government transparency and accountability, in part because disclosure can cure inadequacies in the government’s own verification processes).

²¹ *Cnty.-Serv. Broad. of Mid-Am., Inc. v. FCC*, 593 F.2d 1102, 1115 (D.C. Cir. 1978).

stringent procedural protections, the FCC’s enforcement activities can become a “scheme of informal censorship” and a *de facto* system of prior restraint.²² Even if the Commission does not administer “anything akin to a literal prior restraint,” the FCC’s enforcement regime may become a “prior restraint *in effect* even though specific materials are not evaluated prior to . . . broadcast.”²³

In *ACT IV*, the D.C. Circuit was examining the Commission’s enforcement practices as they existed in the early 1990s, and even then it found the Commission’s enforcement regime “troubling.”²⁴ The court noted that several features of that regime threatened to turn the system into one of *de facto* prior restraint.²⁵ Specific enforcement practices, such as “forwarding viewer or listener complaints to the broadcaster with a request for a formal response to the FCC” or the “issuance of notices of inquiry . . . [which serve] as means for communicating official pressures to the licensee,” can restrain the licensee’s speech.²⁶

As Fox’s initial comments explained, many of those “troubling” aspects of the enforcement policy remain in place today; some have even gotten worse. But the tactics described above open an unsettling new avenue for procedural abuse. When complaint mills unfurl schemes to deceive the Commission, and when that leads to increased investigations and, ultimately, enforcement, the threat of chilled speech intensifies.

²² *ACT IV*, 59 F.3d at 1259, 1262.

²³ *Id.* at 1260–61 (emphasis supplied).

²⁴ *Id.* at 1260.

²⁵ *Id.* at 1254-55.

²⁶ *Cnty.-Serv. Broad.*, 593 F.2d at 1116; *see also MD/DC/DE Broadcasters Ass’n v. FCC*, 236 F.3d 13, 19 (D.C. Cir 2001) (“Investigation by the licensing authority is a powerful threat, almost guaranteed to induce the desired conduct.”).

B. The *In Terrorem* Effect of This Informal Scheme of Censorship Has Caused Fox and Other Broadcasters to Censor Themselves, Chilling Speech Protected by the First Amendment

It goes without saying that the more complaints that are lobbed in to the FCC, the more likely it is that the Commission will pluck out one or more of them for investigation and potentially massive fines.²⁷ When those complaints are divorced from the procedural protections that the FCC has promised to follow – as increasingly has been the case in recent years – the harmful impact on speech is aggravated. If a complaint originating from a single source is mistakenly perceived by the Commission to be an indication of a groundswell of opinion, it easily could lead the agency to pursue more aggressive enforcement. Indeed, the FCC threatened, in the very *Public Notice* that initiated this proceeding, to continue pursuing “egregious” cases,²⁸ and the Commission has long considered it appropriate to investigate (and potentially sanction) every station for which the agency has received a viewer complaint.²⁹ The

²⁷ See Fox Comments at 39.

²⁸ See *Public Notice*, at 1.

²⁹ The Commission has routinely fined or proposed to fine multiple broadcast stations for the same network program, based solely on the receipt of complaints that purported to come from the markets served by those stations. See, e.g., *Complaints Against Various Television Licensees Concerning Their Feb. 1, 2004 Broad. of the Super Bowl XXXVIII Halftime Show*, Order on Reconsideration, 21 FCC Rcd. 6653, ¶ 30 (2006) (“it is sufficient that viewers in markets served by each of the CBS Stations filed complaints with the Commission identifying the allegedly indecent program broadcast by the CBS Stations”). In a nod to the constitutionally-required restraint that limits indecency enforcement to cases based upon *bona fide* viewer complaints, the Commission has acknowledged that it cannot fine a station when there had been no complaint filed from the market served by that station. See, e.g., *Complaints Against Various Licensees Regarding Their Broad. of the Fox Television Network Program “Married By America” on Apr. 7, 2003*, Forfeiture Order, 23 FCC Rcd. 3222, 3239 ¶ 1 n.3 (2008) (declining to issue forfeitures against all 169 Fox Television Network stations that had been subject to the prior Notice of Apparent Liability, because “[c]onsistent with our policy of restrained enforcement in indecency proceedings, we have limited the instant Forfeiture Order to stations in markets from which we received indecency complaints about the subject episode”). The fraudulent complaints that Fox and the Fox Affiliates have recently unearthed show that that someone is apparently trying to manufacture complaints from multiple television markets that

complaint mill scheme described herein thus could have the very tangible effect of serving as the ostensible hook to pursue action against multiple stations in separate markets – even if the FCC has not received a single legitimate, verifiable complaint.

In *ACT IV*, the D.C. Circuit narrowly upheld the indecency regime, but in the years since the case was decided, the Commission has made fundamental changes to its indecency enforcement procedures that have resulted in precisely the type of scheme of prior administrative restraint about which the court was so concerned. Fox catalogued these changes in its comments, noting that the *in terrorem* effect of prior Commissions' informal censorship has caused Fox and other broadcasters to censor themselves, chilling vast amounts of speech that is protected by the First Amendment.

Indeed, for years now broadcasters have been forced to choose between showing potentially controversial programs, or else risking massive fines (along with the threat of license revocation). Given this obvious dilemma, it should come as no surprise that broadcasters often err on the side of caution – refusing to speak at all rather than risking arbitrary and unlawful enforcement penalties. As Fox detailed in its initial comments, for instance, several CBS affiliates refused to broadcast a Peabody Award-winning documentary about the September 11 terrorist attack, which contains expletives spoken by firefighters in the World Trade Center in the aftermath of the attack.³⁰ In addition, a station in Pennsylvania ceased providing any live

could lead directly to massive, constitutionally impermissible forfeitures, thereby magnifying the chilling effect on protected speech.

³⁰ See Larry Neumeister, *Some CBS Affiliates Worry over 9/11 Show*, Associated Press, Sept. 3, 2006; Fox Comments at 18.

coverage of news events “unless they affect matters of public safety or convenience.”³¹ And some stations ceased providing any live programming in an effort to mitigate the risk of enforcement.³²

As the courts have acknowledged, if the Commission’s unconstitutional procedures remain in place, “there will undoubtedly be countless other situations where broadcasters will exercise their editorial judgment and decline to pursue contentious people or subjects, or will eschew live programming altogether, in order to avoid the FCC’s fines. This chill reaches speech at the heart of the First Amendment.”³³ In an environment in which the Commission itself has pledged to give heightened scrutiny to so-called egregious cases – whatever those may be – adding numerous fake complaints to the mix only exacerbates the likelihood of tipping the Commission’s enforcement scheme into an unconstitutional system of informal censorship.

IV. CONCLUSION

Given the extent to which overzealous advocacy groups apparently will overreach to influence the indecency conversation, the Commission should tighten its viewer complaint process to ensure that only legitimate complaints form the basis for FCC action. As the courts long have made clear, only a restrained indecency enforcement approach can be sustained under the Constitution. Enforcement actions based on fraud and fakery are utterly inconsistent with a restrained approach, and the Commission should not tolerate activities that make a travesty of its procedures. If it remains engaged in the indecency business at all, the FCC should ensure that

³¹ See *Fox Television Stations, Inc. v. FCC*, 613 F.3d 317, 335 (2d Cir. 2010), *vacated and remanded*, 132 S. Ct. 2307 (2012).

³² See *id.*

³³ *Id.*

the sharp bite of its enforcement watchdog is reserved for, at most, broadcasts that are the subject of *bona fide* viewer complaints.

Respectfully, submitted,

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February 14, 2014

EXHIBIT A

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Date: 11/25/13

NW COMMUNICATIONS OF PHOENIX, INC.
444 N CAPITOL ST, NW STE 740
WASHINGTON, DC 20001

RE: FCC & Advertiser Complaints for program Family Guy on KSAZ-TV

I have just made FCC complaints against your KSAZ-TV broadcast license. I will record the program family guy and identify the local & national advertisers. I will send complaints to those advertisers and the FCC. I am hopeful that I can get 100's to join me. I will make a special effort to tell my friends to object to your license renewal.

I believe there are thousands of people in your broadcast area who are disgusted with your broadcast station's airing of the program Family Guy including me.

Seth MacFarlane the creator & executive producer of the program Family Guy has targeted appalling vile sexual content at kids using your broadcast station.

Fox promotes the program Family Guy as "#1 with Teens"...and because it is a cartoon, the show is watched by tens of thousands of young children every week.

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You can do a great service to the community by cancelling the program Family Guy. Your station would also avoid the continued FCC complaints & loss of advertisers.

If you continue to broadcast this horrendous program, then I will try my best to have the FCC revoke your broadcast license. Also how many objections to your license renewal can I have my friends file?

You must stop the filthy indecent propoganda that is offensive and unlawful, targeted at the youth in your broadcast area

Include this complaint letter in the licensee Public Inspection File and also the attached copy of FCC complaint in accordance with FCC regulations.

Sincerely,
IVANA MARSH

MILANU FL 331

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HANS NOBEL
1401 W Kennedy Blvd
Tampa, FL 33606

Date: 11/25/13

NEW WORLD COMMUNICATIONS OF TAMPA, INC.
444 N CAPITOL ST, NW STE 740
WASHINGTON, DC 20001

RE: FCC & Advertiser Complaints for program Family Guy on WTVT-TV/FOX 13

I have just made FCC complaints against your WTVT-TV/FOX 13 broadcast license. I will record the program family guy and identify the local & national advertisers. I will send complaints to those advertisers and the FCC. I am hopeful that I can get 100's to join me. I will make a special effort to tell my friends to object to your license renewal.

I believe there are thousands of people in your broadcast area who are disgusted with your broadcast station's airing of the program Family Guy including me.

Seth MacFarlane the creator & executive producer of the program Family Guy has targeted appalling vile sexual content at kids using your broadcast station.

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Sincerely,
HANS NOBEL

2000151290



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SHERYL BATLLE
4601 Crenshaw Blvd
Los Angeles, CA 90008

Date: 11/25/13

FOX TELEVISION STATIONS, INC.
444 N CAPITOL ST, NW STE 740
WASHINGTON, DC 20001

RE: FCC & Advertiser Complaints for program Family Guy on KTTV /FOX 11

I have just made FCC complaints against your KTTV /FOX 11 broadcast license. I will record the program family guy and identify the local & national advertisers. I will send complaints to those advertisers and the FCC. I am hopeful that I can get 100's to join me. I will make a special effort to tell my friends to object to your license renewal.

I believe there are thousands of people in your broadcast area who are disgusted with your broadcast station's airing of the program Family Guy including me.

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Include this complaint letter in the licensee Public Inspection File and also the attached copy of FCC complaint in accordance with FCC regulations.

Sincerely,
SHERYL BATLLE

20001151290

MIAMI FL 331
09 DEC 2003 PM 5 L





JOE FRANJUL
86 3Th St Nw
Atlanta, GA 30308

Date: 11/25/13

NEW WORLD COMMUNICATIONS OF ATLANTA, INC.
444 N CAPITOL ST, NW
444 N. CAPITOL STREET, NW STE 740
WASHINGTON, DC 20001

RE: FCC & Advertiser Complaints for program Family Guy on WAGA-TV/FOX 5

I have just made FCC complaints against your WAGA-TV/FOX 5 broadcast license. I will record the program family guy and identify the local & national advertisers. I will send complaints to those advertisers and the FCC. I am hopeful that I can get 100's to join me. I will make a special effort to tell my friends to object to your license renewal.

I believe there are thousands of people in your broadcast area who are disgusted with your broadcast station's airing of the program Family Guy including me.

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Sincerely,
JOE FRANJUL

MISAMI PHL 33H

09 DEC 2013 PM 5 L



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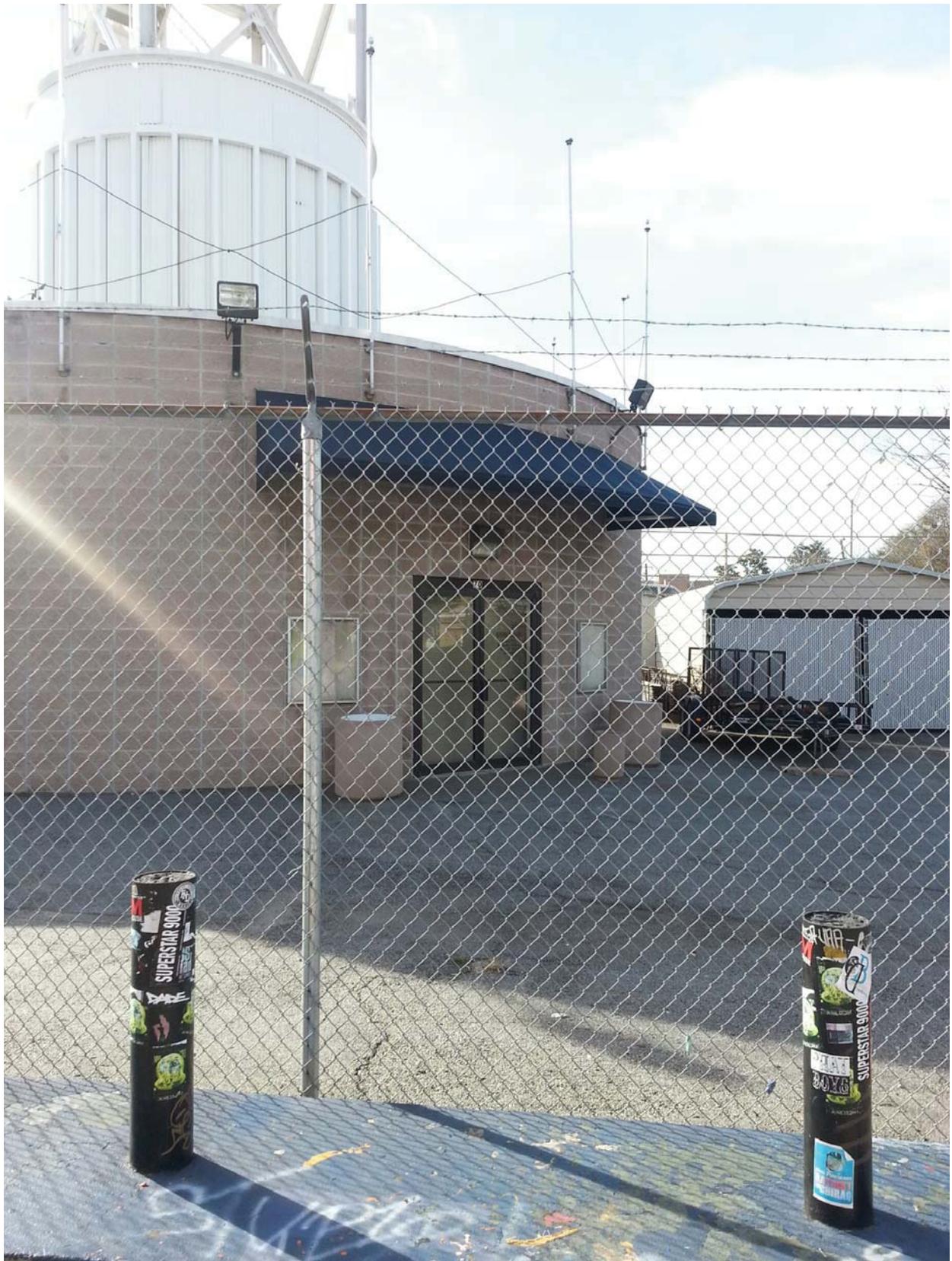
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ANTONIO RIVERA
7255 Elvis Presley Blvd
Memphis, TN 38116

Date: 11/25/13

FOX TELEVISION STATIONS, INC.
444 N CAPITOL ST, NW STE 740
WASHINGTON, DC 20001

RE: FCC & Advertiser Complaints for program Family Guy on WHBQ-TV/FOX 13

I have just made FCC complaints against your WHBQ-TV/FOX 13 broadcast license. I will record the program family guy and identify the local & national advertisers. I will send complaints to those advertisers and the FCC. I am hopeful that I can get 100's to join me. I will make a special effort to tell my friends to object to your license renewal.

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Sincerely,
ANTONIO RIVERA

MINNAPOLIS 331

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